

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, October 23, 2002 – 9:00 a.m. – Room 403 State Capitol

Members Present:

Sen. David L. Gladwell, Senate Chair
Rep. Ben C. Ferry, House Chair
Sen. D. Edgar Allen
Sen. Millie M. Peterson
Sen. Michael G. Waddoups
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Ron Bigelow
Rep. Katherine M. Bryson
Rep. Scott Daniels
Rep. James A. Ferrin
Rep. Neal B. Hendrickson
Rep. Eric Hutchings

Rep. Mike Morley
Rep. Mike Thompson
Rep. A. Lamont Tyler

Members Absent:

Sen. Terry R. Spencer
Rep. Greg J. Curtis
Rep. David Ure

Staff Present:

Mr. Jerry D. Howe, Research Analyst
Ms. Esther D. Chelsea-McCarty, Associate General Counsel
Ms. Glenda S. Whitney, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary, Glenda Whitney, at 538-1032.

1. Call to Order and Committee Business

Chair Ferry called the meeting to order at 9:19 a.m. He welcomed and introduced Rep. Mike Morley as a new member of the Judiciary Interim Committee replacing Rep. Glenn Way.

MOTION: Sen. Peterson moved to approve the minutes of the September 18, 2002 meeting. The motion passed unanimously, with Sen. Waddoups, Rep. Bennion, and Rep. Ferrin absent for the vote.

2. Sentencing of Death Penalty Cases

Sen. David Gladwell, sponsor of draft legislation "Sentencing in Capital Cases Amendments," referred to the draft bill distributed in the Judiciary Interim Committee Supplemental Mailing Packet. He presented an overview of the draft legislation and proposed technical changes and answered questions.

Mr. Ronald Gordon, Director, Utah Sentencing Commission, reviewed the Utah Sentencing Commission report that was also distributed in the Supplemental Mailing Packet. He said the Sentencing Commission devoted substantial time and effort in studying this issue during September and October. He explained that the report summarizes the legislation and provides the position of the Sentencing Commission on each of the bill's provisions. He explained that the Sentencing Commission is of the opinion that the bill represents a sound public policy. However, he also noted that the Sentencing Commission is deeply divided whether the defendant or the prosecution should carry the burden and whether the judge or the jury should decide whether an offender meets the definition of mental retardation. These are two difficult issues that will require legislative consideration.

MOTION: Sen. Gladwell moved to amend lines 292 and 295 of the draft, deleting age "18" and inserting age "22." On line 302 after the word "establish" insert "that" and on line 303 after the word "confession" delete "that." The motion passed unanimously, with Sen. Waddoups, Rep. Bennion, and Rep. Ferrin absent for the vote.

Mr. Paul Boyden, Director, Statewide Association of Prosecutors, spoke in support of the bill and said it appropriately implements the Atkins decision.

MOTION: Sen. Gladwell moved to pass draft legislation "Sentencing in Capital Cases Amendments," as amended, out favorably as a committee bill.

SUBSTITUTE MOTION: Rep. Daniels moved on lines 74, 191, 201, 292, and 295, to delete "age 22" and insert "the commission of the crime." Sen. Gladwell and Rep. Bryson spoke against the substitute motion. The motion failed with Sen. Peterson and Rep. Daniels voting in favor of the motion. Sen. Waddoups, and Rep. Bennion were absent for the vote.

SUBSTITUTE MOTION: Sen. Peterson moved on line 191, to delete "age 22" and insert "the commission of the crime." The motion failed with Sen. Peterson, Rep. Arent, Rep. Daniels, Rep. Hutchings, and Rep. Thompson voting in favor of the motion. Rep. Bennion was absent for the vote.

The Committee returned to Sen. Gladwell's original motion. The motion before the Committee was to pass draft legislation "Sentencing in Capital Cases Amendments," as amended, out favorably as a committee bill. The motion passed with Rep. Daniels voting in opposition. Rep. Bennion was absent for the vote.

3. Draft Legislation, "Competency to Stand Trial Amendments," (S. Daniels)

Rep. Scott Daniels, sponsor of the draft legislation "Competency to Stand Trial Amendments," referred to the draft that was distributed in the Judiciary Interim Committee Mailing Packet. He explained this bill received a Judiciary Committee note last General Session, that it passed in the House, but was not considered in the Senate. He noted that the bill changes, to a small degree, the procedure for determining whether a person is competent to stand trial and by providing for greater cooperation with the defense. He answered questions of the Committee.

Mr. Creighton C. Horton, Attorney General's Office, presented an overview of the draft legislation "Competency to Stand Trial Amendments," and explained the changes to the draft.

MOTION: Rep. Tyler moved to pass draft legislation "Competency to Stand Trial Amendments," out favorably as a committee bill. The motion passed unanimously, with Rep. Bennion and Rep. Thompson absent for the vote.

4. Uniform Trust Act

Mr. Tom Christensen, Attorney, distributed and reviewed a handout "Status Report on Uniform Trust Code Review." He explained that S.B. 43, "Uniform Trust Act," was introduced in the 2002 General Session by Sen. Lyle Hillyard and that a committee of the Estate Planning Section of the Utah State Bar was subsequently formed to study and make recommendations regarding the bill. Mr. Christensen explained that the bill contains extensive modifications and that although the Committee has spent substantial effort analyzing its provisions it is not yet prepared to take a position on the legislation. Mr. Christensen distributed a handout containing some of the issues the committee is reviewing.

5. Divorce

Rep. James Ferrin referred to H.B. 37, "Parent-Time Amendments," that he sponsored in the 2002 General Session. He presented an overview of the bill, explaining the Committee had endorsed the bill during the last interim. He explained that the bill passed the House and went to the Senate where it failed for lack of appropriation. The bill prohibits courts from considering gender when determining custody in a divorce and specifies considerations for the court in determining parent-time, he said. In addition, the bill provides sanctions for the wrongful denial of visitation.

Ms. Lori Nelson, Family Law Section, Executive Committee of the Utah State Bar, spoke in support of the bill.

Ms. Gayle Ruzicka, Eagle Forum, expressed concern with lines 36 and 75 of the bill because custodial parents will be confused by the bill.

Mr. Conrad Lloyd, Focus, spoke in support of the bill.

MOTION: Rep. Thompson moved to pass legislation "Parent-Time Amendments," out favorably as a committee bill. The motion passed unanimously, with Sen. Gladwell, Rep. Bennion, Rep. Bigelow, and Rep. Bryson absent for the vote.

Rep. Eric Hutchings referred to H.B. 332, "Child Support Modifications," that he sponsored in the 2002 General Session. He presented an overview of the bill. This bill also was endorsed last year by the Judiciary Committee but the bill did not pass the Senate. He explained that the bill modifies provisions relating to child support and provides for a reduction in the amount of child support when a child remains with the noncustodial parent for a certain length of time.

Mr. Brent Holdaway, Focus, expressed concern that the bill was too lenient and recommended an amendment on line 16, that 50 percent be changed to 100 percent for each child.

Ms. Emma Chacon, Office of Recovery Services, expressed concern with the mechanics of the bill. She suggested working with Rep. Hutchings to address specific issues with the bill.

Ms. Gayle Ruzicka, Eagle Forum, expressed concern with the bill and suggested that noncustodial parents, despite feelings of over payment, do not usually pay their fair share of the actual expenses of raising children.

Ms. Lori Nelson referred to previous comments and said the 50 percent reduction in child support has worked well for extended visitation. She did agree with Ms. Chacon that the mechanics of the bill should be addressed.

MOTION: Sen. Waddoups moved to continue on to the next agenda item and limit that discussion to five minutes.

SUBSTITUTE MOTION: Sen. Peterson moved to adjourn the meeting. The motion passed unanimously, with Rep. Bigelow and Rep. Bryson absent for the vote.

Draft legislation, "Parent-Time Assistance Office," was not discussed.

Focus Group Presentation, was not presented.

6. Other Items / Adjourn

Chair Ferry adjourned the meeting at 12:10 p.m.